

**IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
10 EDC 6732**

## FINAL DECISION ORDER OF DISMISSAL

## STANDARD OF REVIEW

**AFTER REVIEWING** the record proper, the Undersigned finds as follows.

2. By Order dated November 19, 2010, the Undersigned found that the basis of dispute by Petitioner against Respondent, including a description of the nature of the problem(s) and facts relating to the problem(s); as well as the proposed resolution of the problem(s) failed to meet the requirements of Paragraph (b) of Section 300.508 of the Individuals with Disabilities Education Act (IDEA 2004) Regulations. The Order further “granted permission to amend the due process complaint including but not limited to providing more definite and specific

statements regarding the nature of the dispute(s) including specific dates, facts supporting those allegations and proposed resolution of each of the specific problem(s) identified.”

3. On or about January 20, 2011, Respondent filed a Second Motion to Dismiss in renewal of its original Motion to Dismiss. In its original Motion to Dismiss Respondent cited that the Petition contained no facts regarding an alleged dispute on the issue of a manifestation determination, and that there were no facts relating to a disciplinary decision that could give rise to a manifestation determination obligation.

4. Petitioner sent an “Amended Due Process Petition” to the Clerk of the Office of Administrative Hearings on January 25, 2011. The Amended Petitioner does not check a dispute with a “decision regarding a manifestation determination for my child.” Further, there is no information contained within the body of the Amended Petition regarding a disciplinary decision that could give rise to a manifestation determination obligation.

5. Respondent’s Second Motion to Dismiss contains other grounds that are applicable to Case Number 10 EDC 6731. Moreover, Respondent has filed a Third Motion to Dismiss that shall be taken up along with the Second Motion to Dismiss in a motions hearing regarding the status of 10 EDC 6731. Those grounds need not be addressed in this decision

### **CONCLUSIONS OF LAW**

1. The Office of Administrative Hearings has jurisdiction over this matter and over the parties

2. Rule 12(b) of the North Carolina rules of Civil Procedure, provides that a motion to dismiss may be asserted for “failure to state a claim upon which relief can be granted.” “Despite the liberal nature of the concept of notice pleadings, a complaint must nonetheless state enough to give the substantive elements or at least some legally recognized claim or is subject to dismissal under Rule 12(b)(6).” *Stanback v Stanback*, 297 NC 181 (1979).

3. Petitioner does not seek nor is there any information before the Undersigned asserting a claim regarding a dispute on the issue of a manifestation determination regarding Petitioner, *Student*.

### **FINAL DECISION**

Disposition of this case by dismissal in accord with Chapter 3 of Title 26 of the North Carolina Administrative Code, and N.C. GEN. STAT. § 150B-33 and N.C. GEN. STAT. § 1A-1, Rule 12 of the North Carolina Rules of Civil Procedure, as well as the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.*, and implementing regulations, 34 C.F.R. Part 300, is proper and lawful. It is hereby **ORDERED** that this matter be **DISMISSED with prejudice**.

## **NOTICE**

In accordance with the Individuals with Disabilities Education Act (as amended by the Individuals with Disabilities Education Improvement Act of 2004) and North Carolina's Education of Children with Disabilities laws, the parties have appeal rights.

### **Under Federal Law**

Any person aggrieved by the findings and decision of this Final Decision, Order of Dismissal may institute a civil action in the appropriate district court of the United States as provided in Title 20 of the United States Code, Chapter 33, Subchapter II, Section 1415 (20 USC 1415). Procedures and time frames regarding appeal into the appropriate United States district court are in accordance with the aforementioned Code cite and other applicable federal statutes and regulations. A copy of the filing with the federal district court should be sent to the Exceptional Children Division, North Carolina Department of Public Instruction, Raleigh, North Carolina so that the records of this case can be forwarded to the court.

### **Under State Law**

Pursuant to the provisions of NORTH CAROLINA GENERAL STATUTES Chapter 150B, Article 4, any party wishing to appeal the final decision of the Administrative Law Judge may commence such appeal by filing a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. The party seeking review must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Decision and Order. N.C. GEN. STAT. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Pursuant to N.C. GEN. STAT. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal.

**IT IS SO ORDERED.**

This the 4th day of February, 2011.

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Augustus B. Elkins II  
Administrative Law Judge